

**PROCEEDING BEFORE THE HONORABLE JAMES A. DODRILL
INSURANCE COMMISSIONER OF THE
STATE OF WEST VIRGINIA**

**IN RE:
PERMANENT GENERAL ASSURANCE CORPORATION
ADMINISTRATIVE PROCEEDING
19-MAP-02000**

**AGREED ORDER ADOPTING REPORT OF
MARKET CONDUCT EXAMINATION AND DIRECTING CORRECTIVE ACTION**

NOW COMES, The Honorable James A. Dodrill, Insurance Commissioner of the State of West Virginia, and issues this Order which adopts the Report of Market Conduct Examination for the examination of Permanent General Assurance Corporation for the examination period ending June 30, 2018 based upon the following findings, to wit:

PARTIES

1 The Honorable James A. Dodrill is the Insurance Commissioner of the State of West Virginia (hereinafter the "Insurance Commissioner") and is charged with the duty of administering and enforcing, among other duties, the provisions of Chapter 33 of the West Virginia Code of 1931, as amended.

2. Permanent General Assurance Corporation (hereinafter, "PGAC" or "Insurer") operates under the provisions of Chapter 33, of the West Virginia Code and is domiciled in Tennessee.

3. Insurer is licensed in the State of West Virginia to transact business as a property and casualty insurance company under the provisions of Chapter 33 of the West Virginia Code.

4. This Market Conduct Examination was instituted pursuant to W.Va. Code

§33-2-9. The conclusions and findings of this examination are public record.

FINDINGS OF FACT

1. The Market Conduct Examination was a targeted examination focusing on complaint handling, claims, underwriting and rating. The examination was conducted in accordance with W. Va. Code §33-2-9(c) by examiners duly appointed by the West Virginia Offices of the Insurance Commissioner.

2. The examination began on August 29, 2018 and concluded on or about October 4, 2018. A total of eight (8) standards were tested during this examination. Of these eight (8), the insurer was found to be compliant with five (5); predominantly compliant with two (2) and non-compliant with one (1) standard.

3. The areas of non-compliance were found in G9 of the market conduct examination report. Claim denial letters did not contain the information required by W.Va. Code R. §114-14-6.17. Some claims were denied in violation of W.Va. Code §33-6-31, the omnibus clause.

4. PGAC has agreed to review all claims denied from the start of the exam period to the present and reevaluate the denials to ensure that the denials were in compliance with W.Va. Code §33-6-31, the omnibus clause, and make restitution where appropriate.

5. On or about December 13, 2018, the examiner filed with the Insurance Commissioner, pursuant to W. Va. Code §33-2-9, a Report of Market Conduct Examination.

6. A true copy of the Report of Market Conduct Examination was sent to PGAC for it to review.

7. PGAC was notified that, pursuant to W. Va. Code §33-2-9(j) (2), it had thirty (30) days after receipt of the Report of Market Conduct Examination to file a submission or objection with the Insurance Commissioner.

8. PGAC has filed no objections and has elected to enter into this Agreed Order.

9. PGAC waives notice of administrative hearing, any and all rights to an administrative hearing, and to judicial review of this matter

10. Any Finding of Fact that is more properly a Conclusion of Law is hereby adopted as such and incorporated in the next section.

CONCLUSIONS OF LAW

1. The Insurance Commissioner has jurisdiction over the subject matter and the parties to this proceeding.

2. This proceeding is pursuant to and in accordance with W. Va. Code § 33-2-9.

3. The Insurance Commissioner is charged with the responsibility of verifying continued compliance with West Virginia Code and the West Virginia Code of State Rules by PGAC as well as all other provisions of regulation that the company is subjected to by virtue of its Certificate of Authority to operate in the State of West Virginia.

4. PGAC was non-compliant with certain areas of the law as evidenced in the Report of Market Conduct Compliance Examination, including but not limited to, denying claims in violation of the omnibus clause. The Insurance Commissioner has the statutory authority to take administrative action against PGAC because of the issues found in the Report of Market Conduct Compliance Examination.

5. Any Conclusion of Law that is more properly a Finding of Fact is hereby adopted as such and incorporated in the previous section.

ORDER

Pursuant to W. Va. Code §33-2-9(j)(3)(A), following the review of the Report of Market Conduct Examination, the examination work papers, and the response of PGAC thereto, if any, the Insurance Commissioner and PGAC have agreed to enter into this Agreed Order adopting the Report of Market Conduct Examination. It is accordingly **ORDERED** as follows:

- (A) The Report of Market Conduct Examination of Permanent General Assurance Corporation for the period ending June 30, 2018 is hereby **ADOPTED** and **APPROVED** by the Insurance Commissioner;
- (B) It is **ORDERED** that PGAC file a Corrective Action Plan which will be subject to the approval of the Insurance Commissioner. The Corrective Action Plan shall detail the changes the insurer is making to its procedures and/or internal policies to ensure compliance with the West Virginia Code. The Corrective Action Plan shall incorporate all recommendations of the Insurance Commissioner's examiners and address all violations cited in the Report of Market Conduct Examination. The Corrective Action Plan shall be submitted to the Insurance Commissioner within thirty (30) days of the entry of this Agreed Order.
- (C) It is further **ORDERED** that PGAC shall review its denied claims from the beginning of this examination period (Jan. 1, 2016) to the present date to ensure that the claims were properly denied and were not denied in violation of the West Virginia Omnibus Clause. For each claim PGAC determines

was improperly denied, PGAC shall adjust the claim and pay the claimant the appropriate sum. PGAC shall provide status reports to the Insurance Commissioner when requested so the Insurance Commissioner is kept apprised of PGAC's progress. Upon completion of adjusting the previously denied claims, PGAC shall submit to the Insurance Commissioner a report setting forth the number of denied claims reviewed, the number of claims found to have been improperly denied, and the amount paid to the claimant for each reopened claim.

- (D) It is further **ORDERED** that within thirty (30) days of the next regularly scheduled meeting of its Board of Directors, PGAC shall file with the West Virginia Insurance Commissioner, in accordance with W. Va. Code §33-2-9(j)(4), affidavits executed by each of its directors stating under oath that they have received a copy of the adopted Report of Market Conduct Examination and a copy of this Order.
- (E) It is further **ORDERED** that PGAC shall continue to ensure compliance with the West Virginia Code and the Code of State Rules. PGAC shall specifically cure the deficiencies identified in the Report of Market Conduct Examination; and
- (F) It is finally **ORDERED** that all such statutory notices, administrative hearings and appellate rights are herein waived concerning this Report of Market Conduct Examination and Agreed Order. All such rights are preserved by the Parties regarding implementation or further action taken on such Order by the Commissioner against PGAC.

Entered this 20th day of March, 2019.



James A. Doolittle
~~Insurance Commissioner~~

REVIEWED AND AGREED TO BY:

On behalf of the INSURANCE COMMISSIONER:



Jeffrey C. Black, Attorney Supervisor
Regulatory Compliance and Enforcement

Dated: 3/19/19

On Behalf of Permanent General Assurance Corporation

By: Nicole Brockman
Print Name

Its: Director of Corporate Compliance

Signature: Nicole Brockman

Date: 3-18-19

Report of Market Conduct Compliance Examination

As of June 30, 2018



**Permanent General Assurance Corporation
2636 Elm Hill Pike, Suite 100
Nashville, TN 37214**

**NAIC COMPANY CODE: 37648
Examination Number: 18-MC-STAT- 02003**

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December 13, 2018

The Honorable Allan L. McVey, CPCU, ARM, AAI, AAM, AIS
West Virginia Insurance Commissioner
900 Pennsylvania Avenue
Charleston, West Virginia 25305

Dear Commissioner McVey:

Pursuant to your instructions and in accordance with West Virginia Code § 33-2-9, a Market Conduct examination has been made for the period of 01/01/2016 through 6/30/2018 on

Permanent General Assurance Corporation
2636 Elm Hill Pike, Suite 100
Nashville, TN 37214

hereinafter referred to as the "Company". The following report of the findings of this examination is herewith respectfully submitted.

FOREWORD

This is a report by test of company compliance with selected Standards contained in the National Association of Insurance Commissioners' (NAIC) *2017 Market Regulation Handbook* ("Handbook") and Standards approved by the West Virginia Offices of the Insurance Commissioner ("WVOIC") which are based on applicable West Virginia statutes and administrative rules, as referenced herein. Testing is based on guidelines contained in the Handbook. All tests applied are included in this report.

Company* as used herein refers to Permanent General Assurance Corporation. "WVOIC" as used herein refers to the West Virginia Offices of the Insurance Commissioner. "W.Va. Code R." as used herein refers to the West Virginia Code of State Rules. "W.Va. Code" as used herein refers to the West Virginia Code Annotated.

EXECUTIVE SUMMARY

The examination fieldwork began August 29, 2018 and concluded on October 4, 2018. A total of 8 (eight) standards were reviewed during this examination. Of these eight (8) standards, the Company was compliant in five (5) predominantly compliant in two (2) and non-compliant in one (1) standard.

These are the areas of concern:

G2 – The Company did not send notices of necessary delays on five (5) claims as required by W. Va. Code R. § 114-14-6.7. Predominantly compliant.

G3 – One (1) denied claim the Company did not send a denial within ten (10) working days of completing its investigation as required by W. Va. Code R. § 114-14-6.3. Predominantly compliant.

G9 – On fourteen (14) claims that required a denial letter, the Company failed to give claimants the option of contacting the Commissioner's Office, and did not provide claimants with its mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17. Note: The examiner observed during the review of form templates provided by the Company that none of the notices denying coverage benefits included this information. For three (3) denied claims, the Company provided the address only, but not any statement. Five (5) claims were improperly denied in violation of W. Va. Code §33-6-31 (omnibus clause). Non-compliant.

The Company is directed to take immediate corrective action on all other violations to demonstrate its ability and intention to conduct business according to the West Virginia insurance laws and regulations.

PURPOSE AND SCOPE OF THE EXAMINATION

Market conduct examiners with the West Virginia Offices of the Insurance Commissioner (WVOIC) reviewed certain business practices of Permanent General Assurance Corporation. W. Va. Code §33-2-9 empowers the Commissioner to examine any entity engaged in the business of insurance. The findings in this report, including all work products developed in producing it, are the sole property of the WVOIC.

The basic business area that was reviewed and tested under this examination was:

- Claims Practices

HISTORY AND PROFILE

Permanent General Companies (PGC or the Company) or its predecessors, either directly or indirectly, have been writing non-standard specialty automobile insurance for over 50 years. PGC offers a wide array of competitive payment plans including low-down payments and flexible payment options, general discounts, as well as varied liability and deductible limits, which cater to the unique characteristics of the non-standard customer. The majority of the policies that the Company writes cover the statutory minimum limits in the given state up to \$25,000/person, \$50,000/accident (\$30,000/\$60,000 in Texas), but for qualifying customers who want higher limits the Company does offer limits up to 100/300/100. These higher limit policies represent a small portion of the Company's business.

The Company's main insurer, Permanent General Assurance Corporation (PGAC), was incorporated on August 25, 1983 as a property and casualty company insuring non-standard automobile risks in Tennessee. On June 30, 1989, Ingram Industries Inc. (Ingram) purchased PGAC and its parent, PGC. Ingram is a large privately held and diversified company based in Nashville, Tennessee.

METHODOLOGY

The examination was conducted in accordance with the standards and procedures established by the National Association of Insurance Commissioners ("NAIC") and West Virginia's applicable statutes and regulations.

The examiners used the NAIC standards of 7% error ratio on claims tests (93% compliance rate) to determine whether an apparent pattern or practice of being compliant, predominantly compliant, or non-compliant existed for any given test. All tests were conducted via random sample taken from a given population. The claims population included both first and third-party claims. The paid population was 937 and a sample of 109 were reviewed. The closed-without-payment population was 919 and a sample of 109 were drawn. 43 were not applicable due to either being a paid claim or not considered a valid claim as no demand was made. Therefore, the examiners reviewed 66 closed-without-payment claims.

Tests designed to measure the level of compliance with West Virginia statutes, rules and regulations were applied to the files. Each area of the examination has specific elements that were tested, and they are listed below. The labeling convention for each business area and coinciding standard below was taken directly from the Market Regulation Handbook. The only standard reviewed for this exam was the "G" Claims area. The examiners may not have discovered every unacceptable or non-compliant activity in which the Company is engaged. The failure to identify, comment on, or criticize specific practices does not constitute an acceptance of the practices by the West Virginia Offices of the Insurance Commissioner or its' designee. A compliance table follows containing results of each area of review with the compliance percentage for the Company and final examination results.

STANDARDS & REVIEW ELEMENTS

G1. CLAIMS: Initial contact by the Company with the claimant is within the required timeframe. (NAIC Market Regulation Handbook Chapter 16, § G Standard 1)

- Was the claimant contacted within 15 working days (or mandated emergency order timeframe) from the date of the loss notice required by W.Va. Code § 33-11-4(9)(b) and W. Va. Code R. § 114-14-5.1

G2. CLAIMS: Timely investigations are made. (NAIC Market Regulation Handbook Chapter 16, § G Standard 2)

- Did the investigation commence within fifteen (15) working days of any claim filed as required by W. Va. Code § 33-11-4(9)(c) and W. Va. R. § 114-14-6.2.a.
- Did the Company promptly conduct and diligently pursue a thorough, fair and objective investigation and not unreasonably delay resolution by persisting in seeking information not reasonably required for or material to the resolution of the claim dispute as required by W. Va. Code R. § 114-14-6.1
- Is the investigation continuing more than 30 calendar days? If so, was a notice of necessary delay sent within 15 working days after the 30 calendar days AND if the investigation continued, were subsequent notices of necessary delay sent with 45 calendar days as required by W. Va. Code R. § 114-14-6.7

G3. CLAIMS: Claims are resolved in a timely manner. (NAIC Market Regulation Handbook Chapter 16, § G Standard 3)

- Did the Company affirm or deny coverage of claims within a reasonable time after proof of loss statements have been completed as required by W. Va. Code §33-11-4(9)(e)
- Did the Company deny the claim or make a written offer within ten (10) working days of completing its investigation as required by W. Va. Code R. § 114-14-6.3
- Did the Company pay any amount agreed upon within (15) working days as required by W. Va. Code R. §114-14-6.11

G4. CLAIMS: The regulated entity responds to claim correspondence in a timely manner. (NAIC Market Regulation Handbook Chapter 16, § G Standard 4)

- Did the Company reply within fifteen (15) working days to pertinent communications from a claimant which reasonably suggests that a response is needed as required by W. Va. Code § 33-11-4(9)(b) and W. Va. Code R. § 114-14-5.3

G5. CLAIMS: Claim files are adequately documented. (NAIC Market Regulation Handbook Chapter 16, § G Standards 5)

- Do the files contain all notes and work papers pertaining to the claim in such detail that pertinent events and the dates of such events can be reconstructed as required by W. Va. Code R. §§ 114-14-3, 114-15-4.2a & 114-15-4.4
- Are the communications properly dated?

G6. CLAIMS: Claims are properly handled according with policy provisions and applicable statutes, rules and regulations. (NAIC Market Regulation Handbook Chapter 16, § G Standards 6)

- Did the Company attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear as required by W. Va. Code §33-11-4(9)(f) and 114-14-6.4 & 6.10
- Was coverage checked for proper application of deductible or appropriate exclusionary language as required by W. Va. Code § 33-11-4(9)(a)
- Is the claimant who is neither an attorney or represented by an attorney given written notice of that statute of limitation as required by W. Va. Code R. § 114-14-6.12
- Does the Company ensure where liability and damages are reasonably clear, that no person recommends that third-party claimants make claim under their own policies solely to avoid paying claims under an insurer's insurance policy

or insurance contract as required by W. Va. Code §33-11-4(9)(m)? and W. Va. Code R. §114-14-6.13

- Does the Company ensure they do not require a claimant to travel unreasonably as required by W. Va. Code R. §114-14-6.14
- Does the Company ensure that claim proceeds are used to pay premiums under another policy unless the insured consents as required by W. Va. Code §114-14-6.16
- Does the Company ensure if it furnish to the claimant the names of one or more conveniently located motor vehicle repair shop that will perform the repairs that it doesn't require the claimant to use a particular repair shop or location to obtain the repairs as required by W. Va. Code R. §114-14-6.18?
- Did the Company adopt and communicate to all its claims agents written standards for prompt investigation and processing of claims in accordance with W. Va. Code R. § 114-14-8 (effective 4/24/2006)

G9. DENIED/CWOP CLAIMS: Claims are handled in accordance with policy provisions and state law. (NAIC Market Regulation Handbook Chapter 16, § G Standard 9)

- Did the Company attempt in good faith to effectuate prompt, fair and equitable settlements of claims in which liability has become reasonably clear as required by W. Va. Code §33-11-4(9)(f) and 114-14-6.4 & 6.10
- Is the denial based upon specific policy provisions or exclusions, if so is the reason included in the denial as required by W. Va. Code § 114-14-6.5
- Is the claimant provided with a reasonable basis for the denial when required by statute or regulation as required by W. Va. Code § 33-11-4(9)(n)
- Does the Company provide the claimant not represented by an attorney a written notice that the claimant's rights may be affected by a statute of limitations to third-party claimants not less than sixty (60) days before the time limit expires as required by W. Va. Code § 114-14-6.12
- Does the company refrain from recommending that a third-party claimant make claim under their own policies to avoid paying claims under an insurer's insurance policy or insurance contract as required by W. Va. Code § 114-14-6.13
- Is the claimant given the option of contacting the Commissioner's Office and provided with its mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17

G10. CLAIMS: Cancelled checks and drafts reflect appropriate claim handling practices. Payments are handled correctly. (NAIC Market Regulation Handbook Chapter 16, § G Standard 10)

- Do the checks include the correct payee and are they for the correct amount?
- Do payment checks indicate the payment is "final" when such is not the case?

- Do checks or drafts purport to release the insurer from total liability when such is not the case?

COMPLIANCE TABLE

<u>Review Section</u>	<u># Pass</u>	<u># Fail</u>	<u>N/A</u>	<u>Minimum Standard Compliance %</u>	<u>Compliance Result %</u>	<u>Examination Result</u>		
						Compliant	Predominantly Compliant	Non- Compliant
G1	175	0		93	100	x		
G2	170	5		93	97		x	
G3	174	1		93	99		x	
G4	175	0		93	100	x		
G5	175	0		93	100	x		
G6	175	0		93	100	x		
G9	153	22		93	87			x
G10	175	0		93	100	x		

OBSERVATIONS

G1 – All claim files reviewed indicated the claimant was contacted within 15 working days from the date of the loss notice.

G2 – Five (5) denied/closed -without-payment claims were not sent required notices of necessary delay. Notices of necessary delay are required when the investigation continues more than 30 calendar days and if the investigation continued, subsequent notices of necessary delay are to be sent every 45 calendar days as required by W. Va. Code R. § 114-14-6.7. Two of these same five also failed standard G9.

G3 – One (1) denied claim the Company did not send a denial within ten (10) working days of completing its investigation as required by W. Va. Code R. § 114-14-6.3. The Supervisor approved disclaimer of coverage on 11/7/17 and approved the denial letter on 11/13/17. While the adjuster communicated the coverage issue verbally on 10/16/17, they did not communicate the decision verbally and there was a delay in sending a denial letter following the coverage analysis documented on 10/16/17.

G4 - Claims files were responded to in a timely manner

G5 – Claim files were adequately documented.

G6 - The Company complied with policy provisions applicable statutes, rules and regulations under this standard.

G9 – On fourteen (14) claims that required a denial letter, the Company failed to give claimants the option of contacting the Commissioner's Office, and did not provide claimants with its mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17. Note: The examiner observed during the review of form templates provided by the Company that none of the notices denying coverage benefits included this information. For three (3) denied claims, the Company provided only an address only without any statement. Five (5) claims were improperly denied in violation of W. Va. Code §33-6-31 (omnibus clause). Two of these five claims also failed standard G2.

RECOMMENDATIONS

G2 – The Company should ensure that all claim investigations continuing more than 30 calendar days are sent notices of necessary delay as required by W. Va. Code R. § 114-14-6.7.

G3 – The Company should ensure that either a denial or a written offer is made on a claim within ten (10) working days of completing its investigation as required by W. Va. Code R. § 114-14-6.3.

G9 – The Company should ensure that claimants are given the option of contacting the Commissioner's Office, providing claimants with its mailing address, telephone number, and web site address as required by W. Va. Code R. § 114-14-6.17.

G9- The Company should ensure that all claims are properly ruled upon in accordance with W. Va. Code §33-6-31

EXAMINER'S SIGNATURE AND ACKNOWLEDGEMENT

The examiner would like to acknowledge the cooperation and assistance extended by the Company during the examination.

In addition to the undersigned, Barbara Hudson CIE, CWCP, MCM, PAHM also participated in the examination.



John Stike, CIE, CPCU, AMCM, CWCP, CIPA, APA, AU, AFI
Examiner-in-Charge

**EXAMINER'S AFFIDAVIT AS TO STANDARDS AND PROCEDURES USED IN
EXAMINATION**

State of West Virginia

County of Kanawha

I, John Stike, being duly sworn, states as follows:

1. I have the authority to represent West Virginia in the examination of Permanent General Assurance Corporation.
2. I have reviewed the examination work papers and examination report, and the examination of Permanent General Assurance Corporation was performed in a manner consistent with the standards and procedures required by West Virginia.

The affiant says nothing further.



John Stike, CIE, CPCU, AMCM, CWCP, CIPA, APA, AU, AFI

Subscribed and sworn before me by John Stike on December 13, 2018



Notary Public

My commission expires: 10-11-2019

